

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

OP.No. 23350 of 2002(D)

PETITIONER:

A.M. RAJAGOPALAN, HEADMASTER (RETIRED)
SANKARA VILASOM U.P. SCHOOL,
MUTHIYANGA, KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS:

1. STATE OF KERALA, REP. BY PRINCIPAL
SECRETARY (FINANCE), GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. ASSISTANT EDUCATIONAL OFFICER,
KUTHUPARAMBA.
3. ACCOUNTANT GENERAL,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER, SRI.MANOJ KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITINER'S EXHIBITS:

- EXT. P1: COPY OF G.O.NO.180/91/(100)/FIN DATED 7.3.'91.
- EXT. P2: COPY OF FIXATION STATEMENT APPROVED AND SANCTIONED BY 2ND RESPONDENT ON 5-12-92.
- EXT. P3: COPY OF COVERING LETTER DT. 23.8.99 ACCOMPANIED BY RELEVANT EXTRACT OF AUDIT REPORT ISSUED BY THE A.E.O. TO HEADMASTER, SANKARA VILASOM U.P. SCHOOL.
- EXT. P4: COPY OF REPRESENTATION DATED 2.11.2000 SUBMITTED BY PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT. P5: COPY OF ORDER DATED 2.6.2001 NO.27759/PRU.1/2001/FIN. ISSUED BY 1ST RESPONDENT.
- EXT. P6: COPY OF G.O.(P) NO.380/94(13)/FIN DATED 9.6.'94.
- EXT. P7: COPY OF GRATUITY PAYMENT ORDER NO.P16/BU/68920319 DATED 16.07.2001 ISSUED BY THE 3RD RESPONDENT.
- EXT. P8: COPY OF PROCEEDINGS DT. 29.12.2001 ISSUED BY 2ND RESPONDENT.
- EXT. P9: COPY OF LETTER DATED 26.7.2002 ISSUED BY 3RD RESPONDENT TO DEPUTY DIRECTOR OF EDUCATION, KANNUR.
- EXT. P10: COPY OF THE FIXATION STATEMENT DATED 24.12.99 IN RESPECT OF THE JUNIOR OF THE PETITIONER.
- EXT. P11: COPY OF THE COMBINED SENIORITY LIST OF THE TEACHERS OF THE SCHOOL DATED NIL.

/TRUE COPY/

P.A. TO JUDGE

JP

T.R. Ramachandran Nair, J.

O.P.NO.23350 of 2002-D

Dated this the 31th day of July, 2007

JUDGMENT

The petitioner herein has approached this court seeking to quash Exts.P5, P8 and P9. Consequent directions have been sought for refixation of his pay at Rs.8550/- as on 1.10.1999 and Rs.8750/- as on 1.10.2000 on the basis of Ext.P1 and subsequent pay revision orders.

2. The petitioner entered service on 3.6.1968 in an aided school. He was promoted as Headmaster of Sankara Vilasom Upper Primary School on 1.7.1985. The selection grade on completion of 25 years was due on 21.10.1992 as per G.O.(P) No.480/89 dated 1.11.1989. The Government as per Ext.P1 order dated 7.3.1991 directed fixation of pay on notional basis in respect of various contingencies specified therein. It was noticed in the order that some of the Headmasters who were promoted before 1.7.1988 may draw less pay than their juniors and to rectify the same, Ext.P1 order has been issued. Thereafter, as per Ext.P2, his pay was fixed in the selection grade scale as on 21.10.1992 at Rs.1250 -2230, at Rs.1990. When it was refixed in the Headmaster's scale at Rs.1330 – 2555 as on 31.10.1992, the pay stood at Rs.2150/-. Ext.P2 shows that the same has

been approved.

3. Thereafter, an audit objection came as per Ext.P3. This audit objection, apparently was as a result of the subsequent pay revision ordered by the Government with effect from 1.3.1992. In fact, the petitioner was granted the benefit of the pay revision in the scale of Headmaster and his pay was fixed at Rs.2240/- in the scale of Rs.1640 – 2900. Various fixations were objected in Ext.P3. He filed an explanation as per Ext.P4 and since there was no consideration of the same, he approached this court in O.P. No.10815/2001. The first respondent was directed to consider and pass orders on Ext.P4 within two months. Ext.P5 is the resultant order passed by the first respondent which is under challenge in this original petition.

4. The issue has arisen since the Government has chosen to pass a fresh order by way of Ext.P6 after the pay revision 1992. In Ext.P6 also in paragraph 2(b) it was noticed that there are teachers who got promotion as Headmasters prior to 1.3.1992 without enjoying Selection Grade and as a result, they may draw less pay than their juniors. Meanwhile, the petitioner retired from service and he has been directed to settle the claim from the D.C.R.G. payable to him.

5. The Government has filed a detailed counter affidavit and the

petitioner has filed a reply affidavit also.

6. It is argued by the counsel for the petitioner that the pay fixation pursuant to Ext.P1 has become final, and hence it cannot be refixed as attempted to in Ext.P3 simply relying upon Ext.P6. It is pointed out that the juniors of the petitioner have been drawing higher pay. Ext.P10 is the pay fixation statement in respect of Smt. V.K. Thankamma who is junior to the petitioner in the same school which evidences this fact. It is therefore pointed out that when juniors are getting higher pay before getting promotion as Headmaster, there is no justification to refix the pay already approved in the case of the petitioner.

7. Learned counsel for the petitioner drew my attention to a judgment of this court in Writ Petition No.5017/2005 dated 24.3.2006. A similar question arose in the above case also. After referring to the various aspects, this court was pleased to hold that “there is some force in the submission of the learned counsel that one of the purposes of Ext.P5 order (G.O. Dated 9.6.1994) was to ensure that Headmasters who got promotion before Senior Grade or Selection Grade became due for them, do not draw a pay which is lesser than their juniors and that juniors who are continuing as Assistant Teachers without promotion on account of their eligibility to opt for pre-revised scale and to get the benefits of fitment and 28-A fixation are able to

draw higher salary than their Headmasters. It was held that this aspect of the matter has not been noticed by the Government. This court therefore directed the Government to consider the matter and to decide the issue afresh. Learned counsel for the petitioner prays for a similar relief herein also.

8. Hence, the contention of the petitioner that his junior was getting higher pay has to be examined, so as to enable the Government to do so, I quash Ext.P5. There will be a direction to the Government to consider and pass orders on Ext.P4 on its merits in the light of the various aspects pointed out above. The petitioner can produce other relevant materials in support of his claim, before the matter is considered by the Government. Appropriate orders will be passed after hearing the petitioner, within a period of three months from the date of receipt of a copy of this judgment. Till orders are passed and communicated, no recovery shall be made from the petitioner based on Exts.P3 and P9.

The original petition is disposed of accordingly. No costs.

(T.R. Ramachandran Nair, Judge.)

kav/

T.R. Ramachandran Nair, J.

O.P.NO.23350 of 2002-D

JUDGMENT

31th day of July, 2007